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Review of The High Court of Delegates

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Aspects of Roman Law is a brief book. Yet in a concise and compact two hundred pages it represents a collected tribute to the unique mind of a great man.

GAIL McKNIGHT BECKMAN
University of Glasgow

G. I. O. Duncan, *The High Court of Delegates*. Cambridge, England. Cambridge University Press, 1971. xxvii, 318 pp. \$19.50.

The High Court of Delegates was in existence an even three centuries, from 1533 to 1833 when its jurisdiction was transferred to the judicial committee of the privy council. However, very few records survived the sixteenth century, and all of the civilian courts of England were in a great decline by the nineteenth century; therefore this book covers only the seventeenth and eighteenth centuries in depth. The Court of Delegates possessed original jurisdiction in civil law (as opposed to common law) cases, but it was not often invoked. Its primary function was to act as the highest appellate tribunal for all of the English civilian courts: ecclesiastical, maritime, university, and chivalry.

This is a technical book written for scholars in the field of institutional history. It starts with a short survey which puts the court into its English setting. Apparently the author thought it not within the scope of his work to go into the continental legal background. There is a chapter on the jurisdiction of the court. After this are seven chapters which discuss in great detail the procedures of the court. The only significant source material for this exposition was the original court records themselves, as the copious footnotes indicate. On the whole it is reasonably easy to follow. However, parts of the chapter on proof by witnesses (pp. 129-133) are confusing to the reader because it was not clearly explained that questions to witnesses from parties producent were called "positions" but questions from parties ministrent were called "interrogatories." The difficulty arises because in equity practice questions by any party were called interrogatories and because of the typographical error on page 132 line 3: "depositions" should read "positions" (depositions were the witnesses' answers). Also it was not explained whether positions were part of the pleading or not.

The discussion of the procedures of the court deals almost entirely with civil (as opposed to criminal) cases which is an accurate reflection of the practical concerns of the delegates. There is a good chapter on the personnel of the court. Here we learn that the judges were appointed on an *ad hoc* basis mainly from among the civilians of Doctors' Commons and the common law high court judges at Westminster. The continuity of the court was preserved, as were the records, by its permanent clerical staff headed by the registrar. The chapter on the records of the court is quite full in order to assist in making them more usable; the pre-existing descriptions are quite brief.

At the end of the text is a long series of appendices containing sample documents. They are extremely useful; it is difficult, at least for this reviewer, to appreciate a type of document without being able to see an example. These illustrations will also be useful to anyone who might wish to compare this court with another. The documents were accurately transcribed; however, the author for some unexplained reason has rendered thorns as y's instead of th's. At the end of the book is a bibliographical list of works consulted. This was obviously included for the benefit of the doctoral examiners; instead of this mechanical listing of such things as novels by Dickens and well known general reference works, the reader would have preferred more books covering the civil law in England, such as H. Consett, *The Practice of the Spiritual or Ecclesiastical Courts* (1685) pp. 188-190, and W. Cockburn, *The Clerk's Assistant in the Practice of the Ecclesiastical Courts* (1760) pp. 233, 237, 246, 260-263.

This book does not discuss the development of legal doctrine, because, as the author points out, the judges never gave reasoned opinions for their decisions. However, much can be learned about the law from its curial procedures and jurisdictions. This court is of interest to lawyers in that it sheds some light on the history of many aspects of law which are now administered by the common law courts: family law, wills and estates, defamation, maritime law. The institutional history of a country is of great importance to historians since people live and act within their institutions. This book is of value to genealogists since the majority of the cases heard by the court of delegates were appeals from the prerogative court of Canterbury. Archivists will find much on the record material of this court throughout the book. This monograph is indeed a significant contribution to legal and historical scholarship.

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